



**STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us**

TELECOMMUNICATIONS

IN THE MATTER OF THE)
IMPLEMENTATION OF THE FEDERAL)
COMMUNICATIONS COMMISSION'S)
TRIENNIAL REVIEW ORDER)

ORDER

DOCKET NO. TO03090705

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Order memorializes action take by the Board of Public Utilities at its June 9, 2004 agenda meeting. On March 2, 2004, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") in United States Telecom Association v. Federal Communications Commission¹, vacated significant portions of the Federal Communications Commission's ("FCC") Triennial Review Order², including the FCC's subdelegation to state commissions of decision-making authority over impairment determinations. The opinion was stayed until June 15, 2004.³

¹ United States Telecom Association v. Federal Communications Commission, 359 F.3d 554 (D.C. Cir., March 2, 2004) ("Court opinion").

² In the Matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Federal Communications Commission, CC Docket Nos. 01-338, 96-98-98-147 (rel. Aug. 21, 2003)("TRO").

³ Subsequent to the Board's June 9, 2004 agenda meeting, on June 14, 2004, the United States Supreme Court issued a decision denying several Competitive Exchange Carriers' ("CLECs") and state utility regulators' requests for an extension of the stay. Also on June 14, 2004, the FCC's Chairman announced that the FCC will "strive to adopt a final order on local telephone competition rules as soon as possible." In that statement, Chairman Powell said: "The regional Bell companies have announced that they will not unilaterally increase rates and have guaranteed the status quo until the end of the year." See www.fcc.gov/Daily_Releases/Daily_Business/2004/db0614/DOC-248393A1.doc (June 14, 2004 Press Release).

At its March 17, 2004 agenda meeting, the Board determined that there was undeniable uncertainty caused by the D.C. Circuit's decision that could impact the governing standard of review. Based upon this finding, the Board conditionally granted Verizon New Jersey Inc. ("VNJ" or "Verizon") its Motion for a Stay of the TRO proceeding. By Request for Comments dated May 14, 2004, Commissioner Connie O. Hughes requested comments from interested parties on the impact of the Court opinion and VNJ's obligation under both existing federal and State requirements.

On June 1, 2004, in response to the Request for Comments, the Board received comments from 24 CLECs, the Division of the Ratepayer Advocate ("RPA") and Verizon. In their comments, the CLECs generally argued that VNJ has an affirmative obligation to continue to provide unbundled network elements ("UNEs") at rates consistent with the Total Element Long Run Incremental ("TELRIC") cost methodology irrespective of the expiration of the D.C. Circuit's self-imposed stay. According to the CLECs, VNJ's obligation stems the following four factors:

- 1) Existing interconnection agreements between the CLECs and VNJ;
- 2) State and federal law, including the existing provisions of both Sections 251 and 252 of the 1996 Federal Act, including section 252(e)(3), wherein states have express authority to enforce their own requirements with respect to access and interconnection to the incumbent's facilities, and the State Telecommunications Act of 1992;
- 3) VNJ's Bell Atlantic merger agreement in which it agreed to continue to provide all UNEs and UNE combinations until all legal challenges to the FCC's unbundling rules were resolved; and
- 4) Existing Board Orders which specify the rates at which and the extent that UNEs must be provided.

It should be noted that while the D.C. Circuit's decision invalidated certain FCC rules, it remanded the matter to the FCC for further review and refinement. However, to date the FCC has yet to promulgate new rules. The parties other than Verizon have generally argued, however, that even though certain rules have been invalidated, decisions based upon those rules remain in effect until the parties mutually agree to new terms or the FCC issues new rules.

In order to preserve the status quo, the Ratepayer Advocate, BridgeCom International, Inc. and TruCom Corporation, Broadview Networks, Inc., BullsEye Telecom, Inc., InfoHighway Communications Corp., Line Systems, Inc., Spectrotel Inc., SNIPLINK LLC, XO New Jersey, Inc., the Competitive Carrier Coalition, Conversent Communications of New Jersey, LLC, and AT&T Communications of NJ, L.P. have asked the Board to issue an Order directing VNJ to abide by the Board's existing Orders and to continue to provide all UNEs and UNE combinations until a final resolution is achieved.

In its response, VNJ indicated to the Board that telecommunications services to CLEC customers will not be unduly disrupted consistent with the mandate of the D.C. Circuit. Verizon stated that it will continue to provide services to the embedded base of CLEC customers in accordance with federal law and interconnection agreements between competitors.

Verizon stated that if CLECs do not opt for commercially-negotiated arrangements, Verizon will give them ample notice after issuance of the mandate before transitioning to service at resale rates (or for high capacity transport and loops, to special access rates). Verizon indicated that it intends to give more notice than its interconnection agreements typically require. Specifically, Verizon has stated that it will give CLECs 90 days notice after the issuance of the D.C. Circuit's mandate and will continue accepting orders for such UNEs during those 90 days.

As was described in the May 14, 2004 Request for Comments, the scope of the D.C. Circuit's ruling creates uncertainty with respect to the rights and responsibilities of Verizon upon issuance of the mandate. The Order contained several focused questions, which were intended to permit the Board to make a reasoned decision on what steps, if any, should be taken once the D.C. Circuit's mandate takes effect.

The Board HEREBY FINDS that authority exists to review this matter pursuant to the provisions of the federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., N.J.S.A. 48:2-13 and N.J.S.A. 48:2-21 et seq. and consistent with previously issued Board Orders specifically, but not limited to, I/M/O the Board's Investigation Regarding the Status of Local Exchange Competition in New Jersey, Dkt. No. TX98010010 (October 1999) and I/M/O the Investigation Regarding Local Exchange Competition for Telecommunications Services, Dkt. No. TX95120631 (December 1997), and I/M/O the Board's Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc., Dkt. No. TO00060356 (March 6, 2002, September 15, 2002 and May 7, 2004).

The Board HEREBY ORDERS that, unless the parties to an interconnection agreement mutually agree to modify their existing Board-approved interconnection agreement, Verizon continue the status quo with respect to providing unbundled network elements, combinations thereof, and the provisioning of the unbundled network element platform to competitive local exchange companies with which it has approved interconnection agreements for, at a minimum, 90 days from notice after issuance of the mandate. Any modifications to the rates, terms or conditions contained in approved interconnection agreements during and after the 90 day period must be approved by the Board, consistent with applicable law, and shall be subject to such further orders as the Board may hereafter issue. The Board shall continue to monitor

developments related to the issues discussed herein and shall take further actions, including the issuance of further orders as may be determined to be necessary, to ensure that all parties' rights are preserved and that any actions taken comport with applicable law.

DATED: **June 18, 2004**

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